

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Younglove Construction, LLC,

Case No. 3:08CV1447

Plaintiff

v.

ORDER

PSD Development, LLC, et al.,

Defendant

This suit arises out of a “design/build” construction contract for a feed mill. Pending are several motions between the parties, including plaintiff’s motion to compel discovery. [Doc. 199]. Defendants-counter-claimants (defendants) oppose the motion, which shall be denied without prejudice.

Plaintiff seeks extensive financial information about the operations of the defendants. Defendants have stated that their counter-claim does not seek damages for lost income or profits. Plaintiff says it needs the requested financial data to enable its expert to calculate the defendants’ damages on an income-based theory.

That theory, so far as I can tell, is not relevant. Defendants seek damages resulting from the use of inferior concrete during construction. Such damages, according to defendants, will be based on the diminished value of the building and/or cost of repairs.

Defendants do not dispute that the mill is operational and generating the income they desire. To the extent that the owner, PSD Development, is not occupying the building, there is no dispute that the operator is affiliated with PSD Development, as are the other defendants. So PSD Development does not appear to be claiming a diminution in rental income – indeed, it appears that

the defendants have worked out whatever the “rent” is on a basis other than what the rent would be if an unrelated third party were the tenant.

I have read the parties’ briefs and considered their arguments with care. For now, given the indisputable fact that no one is claiming lost income, information about income and related financial information is neither necessary nor appropriate.

If something happens to cause that to change, plaintiff may seek leave to renew its requests for this information. For now, it is hereby

ORDERED THAT plaintiff’s motion to compel [Doc. 199], be, and the same hereby is denied, without prejudice.

So ordered.

s/James G. Carr
United States District Judge